

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

August 5, 2009

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, August 5, 2009 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Susan Krumholz, first alternate Mike Mello and second alternate, Raymond LaFazia.

Also present were: Peter Ruggiero, Town Solicitor, Gareth Eames, Building/Zoning Official and Sally Ferreira, Court Reporter.

1. A petition has been filed by the Tiverton Yacht Club, 58 Riverside Drive requesting a variance to Article V, Section 1 of the Tiverton Zoning Ordinance in order to permit existing lockers to remain located at 0 Riverside Drive, Tiverton, RI being Map 6-5, Block 73, Card 30 on Tiverton Tax Assessor's maps closer to the side yard setback than currently allowed in a waterfront zoning district.

Attorney Tremblay requested this matter be continued due to the fact he received a deed from neighbors on Monday and the town planner, Chris Spencer, needs time to look it over along with the plans. Mr. Jackson made a motion to continue this matter to the September 2nd meeting and Mr. Mello seconded. The vote was unanimous. Voting were: Chairman David Collins, Mr. Jackson, Ms. Krumholz, Mr. Mello and Mr. Lafazia.

2. A petition has been filed by Olive M. & Rosemary Eva of 4019 Main Road, Tiverton, RI appealing the decision of the Building Official to issue a permit on January 13, 2009 for a freestanding sign located at 3988 Main Road, Tiverton, RI being Map 2-3 Block 125 Card 16 on Tiverton Tax Assessor's Maps and located in an R80 zoning district.

The Chairman advised Attorney Leary and Attorney Allott this matter will not be heard tonight due to the fact one of the board members who sat last month is in the hospital and unfortunately there is no quorum for this matter to be heard. The Chairman advised the attorneys this matter is continued to the September 2nd, meeting.

3. Remanded by Superior Court to allow for the introduction of new evidence and reconsideration by the board of their decision dated April 3, 2008 on the matter of: A petition has been filed by Bryan N. Sanford, Jr. of 84 Cynthia Avenue, Tiverton, RI appealing a decision of the Tiverton Building/Zoning Official to issue a notice of violation dated January 28, 2008 to cease and desist construction of a new single family

dwelling located at Cornell Road (0 Crandall Road) Tiverton, RI being Map 4-8 Block 140 Card 4 on Tiverton Tax Assessor's Maps and located in a R80 zone.

DECISION:

The Chairman asked Christopher Murphy, attorney for the petitioner, to give a brief summary. Attorney Murphy began by saying Mr. Eames issued a building permit to Mr. Sanford back in December of '08. Mr. Sanford obtained financing and began constructing a single family residence on Cornell Road. Around the time of the bottom inspection, Mr. Eames issued a cease and desist order and Mr. Sanford appealed the issuance. Attorney Murphy went on to say this matter was remanded from the Newport Superior Court for presentation of new evidence. Attorney Murphy listed the evidence presented which included a copy of case law in the matter of Carvalho vs. Members of the Tiverton Zoning Board and the deposition of Jodi Roy with various documents which were subpoenaed. Attorney Murphy also reminded the Board that

Steve Berlucchi, the DPW director, testified at the June 3rd Zoning Board meeting regarding Cornell Road and the proposed unpaved portions of Cornell Road. Attorney Murphy concluded by saying the issue is whether the standard of the road complies to the zoning ordinance. The Chairman asked Attorney Murphy if further evidence is going to be presented and Attorney Murphy responded no.

At this time, Gareth Eames, the building official, was sworn in to answer questions. Mr. Ruggiero reminded the Board when this originally came to the Zoning Board, the board members upheld the Building Official's decision and then this matter went to the Superior Court and was remanded because during the interim, the Planning Board approved the Sandy Woods Farm Development which was extending a portion of Cornell Road from the Sanford property.

There was discussion regarding the Sandy Woods Farm Development. Bryan Sanford, Jr., was sworn in and there was discussion of the style of construction of this home. Jim Spears representing the Tiverton Land Trust was present and stated he drove up the undeveloped road from the south side in his Subaru with no problem.

After some discussion, the Board went into executive session. Mr. Lafazia made a motion to remove the cease and desist order of the building official. Mr. Mello seconded. The vote was four to one. Voting in favor were: Chairman David Collins, Ms. Krumholz, Mr. Mello, and Mr. Lafazia. Opposed: Mr. Jackson.

4. A petition has been filed by Diana M. Botelho of 136 Maple Drive, Tiverton, RI requesting a variance to Article 6, Section 3.b. of the Tiverton Zoning Ordinance in order to allow an existing garage to remain in the front yard after adjusting the western property line through an Administrative Subdivision at 136 Maple Drive, Tiverton, RI being Map 3-7 Block 211 Card 1C on Tiverton Tax Assessor's Maps whereby accessory structures can not occupy the front yard in an R80 zoning district.

The Chairman stated a letter was received from Ms. Botelho stating she is not available tonight and is requesting a continuation until next month. Ms. Krumholz made a motion to allow her to continue her petition until next month. Mr. Mello seconded. The vote was unanimous. Voting were: Chairman David Collins, Mr. Jackson, Ms. Krumholz, Mr. Mello. And Mr. Lafazia.

5. A petition has been filed by Stephen E. and Susan B. Plaud of 1986 Main Road, Tiverton, RI requesting a variance to Article V, Sections 1, 2, & 3 of the Tiverton Zoning Ordinance in order to subdivide one parcel into two at 1986-1988 Main Road, Tiverton, RI being Map 1-10 Block 89 Lot 19 on Tiverton Tax Assessor's Maps whereby leaving Lot A with less than required lot area, lot width, lot frontage, suitable area, front, rear and side yard setbacks and Lot B with less than required lot frontage, lot width and front yard setback located in an R40 zoning district.

DECISION:

Attorney Jeremiah Leary on behalf of the petitioner stated at the present time there are two homes on this one lot; a house in the front closest to Main Road that was constructed in approximately 1935 shown as Lot A on the plan and a house in the rear which was constructed in approximately 1950 shown as Lot B on the plan. Attorney went on to say the applicants occupy the home on Lot A and their daughter occupies the home on Lot B. Attorney Leary informed the Board the applicants appeared before the Planning Board on April 7th with this same exact plan and the Planning Board voted unanimously to grant conditional preliminary approval of the plan. Attorney Leary requested that the memorandum from the Planning Board be marked as an exhibit. The Chairman marked the memorandum as Exhibit A.

Attorney Leary stated both houses are presently served by an existing driveway but what the Planning Board elected to do was to eliminate that driveway and there will be a new driveway moved slightly to the south which will serve both lots and will also form the frontage for proposed Lot B. Lot A will be granted an easement over Lot B to use the new driveway for access and utilities. Attorney also stated both lots are served by public water and an approved septic system for Lot B and Lot A.

At this time, Don Medeiros of Able Engineering was sworn in and gave testimony regarding the septic system. Mr. Medeiros stated there is an approved septic system on Lot B and there is an existing septic system on Lot A, however, no documentation could be found in the building department or DEM so a new conforming system will be built on Lot A.

Mr. Mello asked Mr. Medeiros if there was enough room to accommodate a fire truck to turn around and Mr. Medeiros stated there are not a lot of dense trees on the driveway so if a safety vehicle had to go over the lawn in some areas to turn around, it could be done.

Mr. Medeiros explained as the driveway comes up from Main Road within the 20 foot wide strip, when it gets up to the garage, there's a turnout for going into the existing garage which is on Lot A and then up at the end there's a turnout at the existing lot on Lot B.

The Board went into executive session. Ms. Krumholz made a motion to grant the requested variances for Lot A and Lot B because there are special conditions which apply to those lots which created disadvantages as it currently exists, that the relief won't be contrary to public interest, that granting the variance won't alter the character of the neighborhood, and allowing such relief will create the least conformity. Mr. Mello seconded. The vote was unanimous. Voting were: Chairman David Collins, Mr. Jackson, Ms. Krumholz, Mr. Mello and Mr. Lafazia.

6. A petition has been filed by Elizabeth Peckham of Wishing Stone Farm, 25 Shaw Road, Little Compton, RI requesting a variance to Article IV Section 10.g. of the Tiverton Zoning Ordinance in order to conduct a Farmer's Market at 1215 Main Road, Tiverton, RI being Map 6-7 Block 195 Lot 1A on Tiverton Tax Assessor's Maps whereby this use is not allowed in an R40 zoning district.

The Chairman called this petition and no one was present to present this petition. No action was taken.

ADMINISTRATIVE ISSUES:

Mr. Jackson stated the July minutes were e-mailed but he would like Mr. Taylor to review them before they were voted on. There was no objection.

The Chairman asked if there was any further business to be discussed and there was none. The Chairman entertained a motion to adjourn. Ms. Krumholz so moved and Mr. Mello seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Krumholz, Mr. Jackson, Mr. Mello and Mr. Lafazia.

(Whereupon the August 5, 2009 Zoning Board of Review meeting was adjourned at 8:32 p.m.)

ZBR/sal

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing 1-5 pages of the Zoning Board of Review minutes of August 5, 2009 are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 24th day of August, 2009.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2009

Salvina S. Ferreira, RPR, CSR
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